

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations and practices of companies affiliated with Enron Corporation, relating to the filing for Chapter 11 bankruptcy of Enron Corp. and its affiliated entities.

Investigation 01-12-008
(Filed December 11, 2001)

**SCOPING MEMO AND RULING OF THE ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE**

Summary

The Commission initiated an investigation (OII) into the financial and operational capabilities of Enron Energy Marketing Corp. (EEM), Enron Energy Services, Inc. (EES) and The New Power Company (NPC) on December 11, 2001. The Commission held a prehearing conference (PHC) on December 20, 2001 to discuss the scope of the proceeding and the schedule.

This scoping memo and ruling describes the issues that this OII will address. The schedule for submitting the prepared testimony and the start of the evidentiary hearings has been revised. The prepared testimony shall be electronically served and mailed to the parties no later than close of business on January 18, 2002. Evidentiary hearings will start on January 24, 2002 at 9:30 a.m. and continue through January 30, 2002. The motion of NPC to be dismissed as a respondent from this proceeding is denied.

Background

The PHC was held on December 20, 2001. At the PHC, the assigned Administrative Law Judge (ALJ) and the Commissioner indicated the type of issues that should be addressed, and that additional issues might be contained in the scoping memo.

With respect to the hearing schedule, the ALJ noted that the OII stated that the week of January 7, 2002 was set aside for hearings. However, the ALJ stated that the scoping memo would address whether different hearing dates should be selected. On December 21, 2001, Daniel P. Leff, the Chief Operating Officer of EES, transmitted a letter to the ALJ on behalf of EES and EEMC. The letter, a copy of which is attached as Appendix I, requested that the Commission postpone the dates for prepared and live testimony. The Enron companies request that the prepared testimony be submitted on January 25, 2002. No date was mentioned by the Enron companies for the evidentiary hearings.

Counsel for NPC made an oral motion at the PHC to dismiss NPC from this proceeding as a respondent. (PHC R.T. p. 15-18.) No one objected to the motion at the PHC.

Scope of Issues

As stated at the PHC, the Commission is interested in gathering facts about the effects, if any, of Enron Corporation's (Enron) bankruptcy filing on the gas and electric customers of those Enron affiliates which are subject to this Commission's jurisdiction, as well as on other California customers. In addition, the Commission is interested in determining the impacts on other entities such as the California Department of Water Resources (DWR) and on the California Independent System Operator (ISO).

The preliminary scope of issues was set forth in the OII. At the PHC, the assigned Commissioner and ALJ described other issues that they were interested in developing in the record. The ALJ also indicated that the scoping memo might contain additional issues that the parties should respond to. The scope of issues that the OII will explore are as follows:

1. What effect will the financial collapse and ensuing bankruptcy of Enron and its subsidiaries have on the Enron affiliated companies' ability to serve its California retail energy customers?
2. What types of services are provided to California retail customers by EES, EEM and NPC?
3. If applicable, when did the Enron affiliated companies listed in the OII file their bankruptcy petition, and what are the court and the proceeding number where this was done?
4. What financial and operational impacts, if any, do Enron's bankruptcy filing and its financial condition have on the energy services provided by EES, EEM and NPC?
5. To what extent will the Enron collapse and bankruptcy lead to price increases, and will it have operational effects on other entities such as the investor-owned utilities, the ISO, and DWR?
6. What impacts, if any, will Enron's bankruptcy filing and its financial condition have on the operations of the California electric and natural gas markets, and, how will these impacts affect California energy customers?
7. What specific steps are the Enron affiliated ESPs and investor-owned utilities taking to ensure that the retail customers of the Enron affiliated companies will continue to receive reliable energy services?
8. What, if any, are the customer service impacts on the Enron affiliated companies' California retail customers as a result of Enron's bankruptcy filing?

9. What are the Enron affiliated companies doing to ensure that there is sufficient customer support staff to respond to customer needs and questions?
10. Have any particular provisions been established between the Enron affiliated electric service providers (ESPs) and the investor-owned utilities or other alternative energy providers as a result of Enron's bankruptcy filing?
11. Has the manner in which EEM, EES and NPC provide energy to their retail customers changed since the Enron bankruptcy filing?
12. Describe whether EEM, EES and NPC have increased their reliance on the ISO to procure electric power for retail customers of the Enron affiliated companies, and if so, describe the percentage of the customers' requirements that are being met by the ISO, and the duration or expected duration of the reliance on the ISO?
13. What are the likely financial impacts on the ISO if it has to procure the supplies for the customers of the Enron affiliated companies?
14. If the Enron affiliated companies have increased their reliance on the ISO, what, if any, are the implications of this for the customers of the Enron affiliated companies and the customers of other providers, including the customers of the investor-owned utilities?
15. How long will the debtor in possession financing allow the Enron affiliated companies to continue operating in California, or is a default of these companies' obligations likely to occur, and if so, how soon?
16. Whether there are Enron affiliates, subsidiaries, or related entities other than those listed in the OII that are involved in retail gas or electric services in California.
17. What actions should the Commission take or recommend to protect California consumers in light of the bankruptcy filing?
18. What course of action should the Commission take with respect to the possible assignment of Enron customer contracts to another ESP, and how should that relate to the proceeding in which the implementation

issues associated with the suspension of direct access are being considered?

19. For those asserting the right of assignment, what is the specific contract language supporting that position? Are there other provisions in the contracts that affect their assignability?
20. Does the assignment language in the electricity contracts permit the customers to initiate the assignment of the contracts to another creditworthy ESP, or does the language only allow the ESP to assign the contract?
21. Assuming the Commission permits the assignment of the direct access contract, must the assignment still be approved by the bankruptcy court?
22. What is the financial impact and cost to a customer of an Enron affiliated company if the customer has to revert to utility service?
23. What will be the financial and operational impact on the investor-owned utilities if the customers of the Enron affiliated companies are switched back to utility service, and can the utilities and DWR accommodate this reversion of service?
24. Are the interests of the gas and electric customers of the Enron affiliated companies being represented in the Bankruptcy Court, for example, with respect to the end use customers' possible responsibility for non-commodity services when the customer was billed using consolidated billing?
25. What additional action, if any, should the Commission take in light of the evidence in this proceeding?

The witnesses who are sponsoring testimony should be prepared to answer other questions relating to the scope of issues set forth in this scoping memo.

The principal hearing officer in this proceeding is ALJ Wong.

Rule 6(c)(1) of the Commission's Rules of Practice and Procedure provides in part that an OII shall determine the category of the proceeding, and that the

categorization is appealable under the procedures set forth in Rule 6.4. The initiating OII categorized this proceeding as ratesetting. No one filed an appeal of the categorization.

Since the category of this proceeding remains ratesetting, ex parte communications are permitted only if they are consistent with the restrictions set forth in Rule 7(c), and are subject to the reporting requirements set forth in Rule 7.1.

NPC's Motion To Dismiss

In its response to the OII, and at the PHC, counsel for NPC moved to dismiss NPC as a respondent to this proceeding. No one at the PHC voiced any opposition to NPC's motion.

Counsel for NPC represented that Enron is only a minority shareholder in NPC, and cannot control the actions of NPC's Board of Directors. Although NPC is registered with the Commission as an ESP, it has never sold electricity to any California customer. According to NPC's response, it is a retail provider of natural gas to residential and small commercial customers in PG&E's service territory. NPC has declared a default under its trading contracts with Enron, and terminated all of its commodity supply and forward transactions under those contracts. NPC expects to replace its gas supply with contracts with other suppliers and from its gas inventory.

NPC is named as a respondent to this OII. Since the Commission indicated in the OII that "information about entities other than the named respondents may be required in order to develop a meaningful analysis of the issues that concern us," the Commission is interested in exploring the effects of Enron's bankruptcy on other companies. (OII, p. 3.) Although NPC is not a direct subsidiary of Enron, some of NPC's stock is owned by Enron. According

to NPC, it also had gas supply contracts with Enron. Thus, Enron's bankruptcy filing has already impacted NPC to some degree. It is those kinds of impacts that the Commission is interested in learning about so that the Commission can understand and fully analyze the issues with which they are concerned. Accordingly, NPC's motion to dismiss is denied.

Schedule

The OII preliminarily determined the need for evidentiary hearings, and adopted a preliminary schedule. At the PHC, it was announced that the prepared testimony is to be served on January 4, 2002, and that evidentiary hearings will commence on January 8, 2002 and run through January 11, 2002.

After the PHC, the EEM/EES letter requesting an extension was transmitted to the ALJ. The letter seeks a delay in serving the prepared testimony, and implicitly seeks a delay in the evidentiary hearings. Some of the parties at the PHC also raised concerns that holding hearings in early January might not be productive given the lack of rulings issued to date by the Bankruptcy Court.

After reviewing the extension request, the scope of the issues that the Commission is interested in, and the time remaining before the announced start of the evidentiary hearings, the request of the Enron affiliated companies to delay the announced schedule should be granted as set forth below. However, because of time-sensitive questions raised about the potential assignment of direct access customers, EES and EEM shall not execute the assignment of California retail customers for at least 30 days after serving testimony in this proceeding. Instead of parties serving their prepared testimony on January 4, 2002, the prepared testimony shall be electronically served and mailed to the service list on or before January 18, 2002. The start of the evidentiary hearings shall be postponed from January 8, 2002 to January 24, 2002 at 9:30 a.m. through January 30, 2002.

The following is the schedule that this proceeding will follow:

OII	December 11, 2001
PHC	December 20, 2001
Prepared testimony electronically served and mailed on the parties	January 18, 2002
Evidentiary Hearings	January 24 – January 30, 2002
Briefing schedule, proposed decision, comments, and final decision	To be decided.

It is expected that this proceeding will be completed within 18 months from the filing of the OII.

IT IS RULED that:

1. Administrative Law Judge John S. Wong is designated the principal hearing officer for this proceeding.
2. The issues to be determined in this proceeding are as listed in the body of this ruling.
3. The schedule for this proceeding is as listed in the body of this ruling.
4. The respondents and any interested party shall electronically serve and mail their prepared testimony to the service list by close of business on January 18, 2002.
5. Enron Energy Marketing Corp. and Enron Energy Services, Inc. shall refrain from assigning any of their contracts with California retail customers for at least 30 days after serving their testimony in this proceeding.

Dated December 28, 2001, at San Francisco, California.

/s/ CARL W. WOOD
Carl W. Wood

/s/ JOHN S. WONG
John S. Wong

Assigned Commissioner

Administrative Law Judge

APPENDIX I

NOTE: See CPUC Formal Files for Appendix I.

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated December 28, 2001, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

